HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case

Special Appeal No. 95 of 2006

Date of Decision : 18th December, 2006

A.F.R. (Approved for reporting)

_____

~~Not approved for reporting.~~

Date : 18.12.2006 Initial of Judge

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Special Appeal No. 95 of 2006

Pradeep Kumar Saxena
S/o Late Har Charan Lal Saxena
R/o 26, Hare Ram Ashram, Kankhal
Hardwar ... Appellant

Versus

1. State of Uttaranchal
   Ministry of Health & Planning
   through its Secretary, Dehradun

2. Director General, Medical Health & Family Planning,
   Dehradun

3. Additional Director, Medical & Family Planning, Pauri.

4. Chief Medical Officer, Haridwar

5. Chief Medical Superintendent,
   Chainrai Mahila Chikitsalaya, Haridwar

6. Chief Medical Superintendent,
   Sanyukt Chikitsalaya, Roorkee,
   Haridwar ... Respondents

Shri Anurag Bisaria learned senior counsel for the appellant.
Shri N.C. Gupta, learned standing counsel for respondents.

Judgment

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This special appeal under Rule 5 Chapter VIII of the High Court Rules has been filed against the judgment and order dated 21.04.2006 passed by the learned Single Judge of this Court in Writ Petition No. 42 of 2006 (S/S), Pradeep Kumar Saxena Vs. State of Uttaranchal and others whereby the learned Single Judge has dismissed the writ petition in limine.

2. A writ petition bearing No.42 of 2006 (S/S) was filed before the learned Single Judge by the petitioner-Pradeep Kumar Saxena for the following reliefs:-

> i. To issue a writ, order or direction in the nature of Certiorari quashing the impugned punishment order dated 11.11.2005 issued by the Respondent No.2 (Annexure No.1).
>
> ii. To issue a writ order of directions in the nature of Mandamus commanding the Respondents to pay the arrears of his salary from the date of his first suspension.
>
> iii. To issue a writ order or directions in the nature of Mandamus commanding the Respondents to pay interest on the above mentioned arrears of salary alongwith penal interest to the petitioner.
>
> iv. To issue or grant any order or direction, which this Hon'ble Court deems fit and proper in the circumstances of the case.
>
> v. Award the cost of the Petition to the Petitioners.

3. The Petitioner-Pradeep Kumar Saxena (appellant) was an employee in the department of Medical Health and Family Planning and was a Senior Clerk posted at Chainrai District Mahila Hospital, Haridwar. Due to the various complaints received against him regarding financial irregularities committed by him during the year 2000 to 2003, the competent authority framed 33 charges of misappropriation against the petitioner (appellant). Thereafter, the Chief Medical Officer, Haridwar was appointed as Inquiry Officer. The Inquiry Officer, after providing adequate opportunity to the petitioner (appellant) submitted his report to the disciplinary authority holding that the charges levelled against the petitioner(appellant) had been proved and found him guilty for the said charges levelled against him except one.

Thereafter, the disciplinary authority proved him copy of the inquiry report and directed him a submit his reply against the said report. The punishing authority after providing him sufficient opportunity punished him vide order dated 11.11.2005 (annexure-2 of the appeal). The punishment order has been passed after departmental enquiry against him whereby his pension was stopped permanently and it was further directed that the amount of embezzlement of Rs. 11,96,289/- be adjusted against the gratuity payable to the petitioner (appellant). The petitioner (appellant) was served with the chargesheet and F.I.R. was also lodged against him.

4. A counter affidavit has been filed by the respondents wherein it has been pleaded that the appellant was given opportunity to defend himself after the chargesheet was served to him but he did not participate in the inquiry inspite of the sufficient opportunities provided to him. It was further pleaded in the counter affidavit that the appellant was also served with the copy of the enquiry report but inspite of the service of the inquiry report, he did not make any representation before the disciplinary authority against it.

5. After hearing the parties, the learned Single Judge dismissed the writ petition on 21.04.2006.

6. Feeling aggrieved by the judgment and order of the learned Single Judge, the present special appeal has been preferred by the appellant.

7. Heard learned counsel for the parties and perused the record.

8. Learned counsel for the appellant contended that vide order dated 07.10.2003, the appellant was reinstated in his service with fully salary which amounts to that he was exonerated from the charges levelled against him. Thereafter, no order was ever passed by the respondents to recall or revoke the order or reinstatement dated 07.10.2003. Sri N.C. Gupta, learned standing counsel for the State/respondents contended that the appellant was reinstated in pursuance of the court's order. Perusal of the W.P. No. 891 (S/S) of 2003, Pradeep Kumar Saxena Vs. State and others shows that the appellant had filed writ petition before the learned Single Judge by which he challenged the suspension order passed by the respondent on 24.07.2003 in which the learned Single Judge passed the following order.

> *"Admit.*
>
> *Learned standing counsel has accepted notice on behalf of all the respondents, who prays for and is allowed three weeks' time to file counter affidavit.*
>
> *List thereafter.*
>
> *In the meantime, the operation of the impugned order dated 24.07.2003 shall remain stayed. The inquiry proceedings shall be expedited and shall be concluded within a period of three months."*

9. Perusal of the interim order dated 27.08.2003, modified vide correction application, clearly reveals that the operation of the impugned order dated 24.07.2003 had been stayed by the Court. It is evident that it was in pursuance of the said interim order that the appellant was reinstated in the service. It cannot be held that the respondents on their own accord made the reinstatement. The said order of reinstatement had been passed in pursuance of the High Court's order passed in W.P. No. 891 (S/S) of 2003, as such, the argument advanced by the learned counsel for the appellant is misconceived.

10. Learned counsel for the appellant further contended that the proper opportunity had not been given to the appellant during the inquiry. The learned counsel further contended that the chargesheet was served upon him and 15 days' time was given to the appellant. Thereafter the appellant moved an application to the inqury officer that one month's time may also be given to him. The appellant was given only 15 days' time and no further time was granted. The chargesheet was served only on 09.11.2004 and the inquiry officer submitted his report on 20.12.2004. The learned counsel for the appellant further contended that the inquiry was conducted by the Inquiry Officer hurriedly. The learned counsel for the respondents contended that the appellant had not participated in the inquiry inspite of the opportunities given to him. He had further contended that the appellant never submitted his reply nor he participated in the inquiry. In view of the said conduct, the inquiry was conducted against him ex-parte and the inquiry officer after taking into consideration all the evidence came to the conclusion that the charges levelled against the appellant had been proved. The learned Single Judge had elaborately discussed all the charges as to how much amount the appellant had embezzled during his tenure of service for which he had bee charged. There are 33 charges of misappropriation of the funds against the appellant. The appellant had misappropriated the money which was drawn by him for the payment to different firms, employees and other persons which was due against the department. He further misappropriated the amount which was to be deposited with Government account but he deposited it in his own account. The inquiry officer found proved all the charges except charge no. 11. It is also revealed from the record that the appellant was suspended by the respondents pending contemplated inquiry in the said

case and he challenged the suspension order by which he was reinstated in the service. An F.I.R. was also lodged against him for the misappropriation of the government money for which he was arrested by the police and he was again suspended.

11. Before proceeding with contention of the learned counsel for the parties, it would be pertinent to mention here that the appellant filed a writ petition before the learned Single Judge bearing No. 104 of 2004 (S/S), Pradeep Kumar Saxena Vs. State and others by which the petitioner had challenged the order of suspension dated 06.02.2004 passed by the Director General, Medical Health & Family Planning, Dehradun on the ground that he had been arrested in a criminal case filed against him u/s 409 I.P.C. & he had been confined to jail and he was suspended under Rule 4 (3) (a) of Uttaranchal Government Servant (Discipline and Appeal Rules), 2003. The learned Single Judge vide order dated 21.02.2004 while disposing the said writ petition ordered as under:-

> "Heard learned counsel for the petitioner Sri Pankaj Miglani and learned Standing Counsel.
>
> By means of the present writ petition the petitioner has challenged the order dated 06.02.2004 passed by the Director General, Medical Health & Family Planning, Dehradun by which the petitioner was suspended for serious charges of financial irregularities. I found no infirmity in the order under challenge.
>
> The petitioner has submitted that he is not getting subsistence allowance according to the law. The writ petition is finally disposed of with a direction to respondents to conclude the enquiry within a period of four months.
>
> In the meantime, the petitioner shall be paid subsistence allowance according to the law.
>
> With these directions, the writ petition is finally disposed of."

12. Thereafter, the appellant again preferred a writ petition before the learned Single Judge bearing No. 157 (S/S) of 2005 by which he had challenged the chargesheet dated 17.08.2004 issued by Director General, Medical Health & Family Planning, Dehradun and also sought the direction to pay the regular salary and arrears of his salary. The said writ petition was disposed of by the learned Single Judge on 17.10.2005 in which it was observed that due to the pendency of the departmental inquiry, the petitioner was not getting pension and other post retrial benefits and he had not been paid the subsistence allowance since he was suspended. The Chief Medical Officer, Haridwar (Inquiry Officer) was directed to conclude the departmental inquiry within a period of three months and also the Disciplinary Authority was directed to pass final order within a period of three weeks from the date of receipt of the inquiry report from the Inquiry Officer. It was further directed that the final order would be passed by the Disciplinary Authority on or before 15.02.2006. The petitioner (appellant) was also directed that in case the petitioner did not choose to file reply of the chargesheet and does not cooperate with the inquiry, the Inquiry Officer may conduct inquiry ex-parte and in the meantime, the petitioner would be paid subsistence allowance during the period when he was suspended. With the above observation the writ petition was dismissed.

13. Thereafter, the appellant had preferred a writ petition bearing No. 144 of 2004 (S/S) in which he had challenged the quashment of the order dated 12.05.2004 by which it was directed that the petitioner be attached to the Joint Hospital, Roorkee, Haridwar and further sought the direction not to attach the petitioner at Roorkee and allow him to work at the same place as he was working prior to his suspension. The

petitioner (appellant) further sought the relief to pay his salary regularly and also arrears of his salary. The said writ petition was also dismissed as infructuous. The order passed 18.10.2005 is quoted hereunder:-

> "Heard Sri Anurag Bisaria, learned counsel for the petitioner and learned standing counsel for the respondent.
>
> By means of this writ petition, the petitioner has prayed to issue a writ order or direction in the nature of Mandamus commanding the respondents not to attach the petitioner at Roorkee and to pay the salary regularly.
>
> Petitioner has already challenged the suspension order by means of filing writ petition No. 157 (SS) of 2005. The writ petition No. 157 (SS) of 2005 has finally been disposed of with a direction to the respondents to conclude the inquiry within a particular period and to pay salary or subsistence allowance in accordance with law.
>
> In view of the above fact that the grievance of the petitioner has been redressed by passing order in Writ Petition No. 157 (SS) of 2005, the present writ petition has become infructuous.
>
> The writ petition is dismissed as infructuous."

14. It is apparent from the above orders, passed in different writ petitions filed by the appellant, the court has ordered to expedite the inquiry. Inspite of the said order when the chargesheet was submitted even thereafter, the appellant did not participate in the inquiry. It is not disputed by the learned counsel for the appellant that chargesheet was served upon him. It is not disputed that 15 days' time was allowed to him on the application given by the appellant. It is obvious that the appellant had not participated inspite of the notice of the inquiry. The appellant submitted an application for providing time of one month before the Inquiry Officer during the inquiry but the Inquiry Officer allowed 15 days' time of the appellant. Inspite of providing him sufficient opportunity he did not file the reply and he did not participate in the inquiry. It is not disputed that the copy of the inquiry

report was delivered to the appellant before passing the impugned punishment order. It is admitted to the learned counsel for the appellant that he did not appear before the disciplinary authority while awarding the punishment. The disciplinary authority served the inquiry report and the appellant was given 14 days' time to submit the reply against the said report before the disciplinary authority but he did not file any reply before the disciplinary authority. If the appellant had any grievance, he could have raised before the disciplinary authority before awarding the punishment. The appellant's conduct clearly shows that he was non-cooperative with the inquiry. The learned counsel for the appellant could not demonstrate us as to whether he has filed any appeal against the order of the disciplinary authority under the rules. He failed to show us that he had filed any appeal before the competent authority. He had not availed the right of appeal conferred upon him by the statue. The learned counsel could have agitated all the points before appellate authority also. It is established from the record that the appellant was afforded sufficient opportunity to defend him before the Inquiry Officer as wall as before the disciplinary authority. We do not find any substance in the argument advanced by the learned counsel for the appellant.

15. It was further contended by the learned counsel for the appellant that the Inquiry Officer had not taken the evidence of the persons who are alleged to have not received the payment from the appellant. It is well settled position of law that the High Court while exercising the power of judicial review under Article 226 of the Constitution of India, does not act as an Appellant Authority. Its jurisdiction is circumscribed and confined to correct the errors of law or procedural error or violation of principles of natural justice. Judicial review is

non akin to adjudication on merit by reappreciating the evidence as an appellate authority. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that individual receives fair treatment and not to correct the errors. The court may interfere where authority held the proceedings against the delinquent officer in a manner inconsistent with the principles of natural justice. The appellant could have raised this point before the appellate authority but the appellant did not prefer the appeal. We cannot enter into the assessment of the evidence and findings recorded by the Inquiry Officer. We do not find any substance in the argument advanced by the learned counsel for the appellant.

16. Learned counsel for the appellant further contended that the punishment awarded by the impugned order is disproportionate with the charges proved against the appellant. The learned counsel further contended that lenient view may be taken in this regard. The learned counsel for the respondents urged that there is no justified ground for modifying the order of punishment because the appellant had committed the defalcation of funds and misappropriated the Government money. The learned counsel for the respondents contended that the appellant is habitual offender. He further contended that the punishment imposed is not grossly or shockingly disproportionate and it should not be modified. Normally, the punishment imposed by the disciplinary authority should not be disturbed by the High Court except in appropriate cases and that too only after reaching to the conclusion that the punishment imposed is grossly or shocking disproportionate after examining all the relevant factor including the nature of the charges proved, the past

conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness and discipline required to be maintained, and the department in which the delinquent person concerned works. In the present case, we do not find that the disciplinary authority had imposed disproportionate punishment keeping in view of the embezzlement committed by the appellant. The appellant had committed embezzlement of huge amount, as such, he is not entitled to any leniency in the matter. It cannot be held that the punishment awarded is grossly or shockingly disproportionate.

17. In view of the foregoing discussion, we are of the considered view that the appeal is liable to be dismissed and the judgment and order dated 21.04.2006 passed by the learned Single Judge of this Court in Writ Petition No. 42 of 2006 (S/S), Pradeep Kumar Saxena Vs. State of Uttaranchal and others is liable to maintained.

18. Accordingly, the appeal is dismissed and the judgment and order dated 21.04.2006 passed by the learned Single Judge of this Court in Writ Petition No. 42 of 2006 (S/S), Pradeep Kumar Saxena Vs. State of Uttaranchal and others is hereby affirmed.

19. No order as to costs.

(J.C.S.Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 18th December, 2006
Shiv